

ARTICLE 15

HAND BOOK



DEPARTMENT OF THE AIR FORCE

*Pacific Air Forces
374th Airlift Wing
Base Legal Office
Yokota Air Base, Japan*

1. ADMINISTRATIVE PROCESSING OF ARTICLE 15 ACTIONS

a. **Purpose and Scope:** An Article 15 action should be accomplished as a swift, nonjudicial response to UCMJ offenses not requiring trial by courts-martial. The desired effect is rehabilitative in nature. This is an action to correct an airman's misconduct quickly and expeditiously, allowing him/her maximum opportunity to rectify their behavior and conform successfully to Air Force standards of conduct.

b. **Initiating the Action:** Initiate contact with the Military Justice Section, 374 AW/JA immediately, or as soon as possible, after there is any suspicion or indication of a situation where nonjudicial, Article 15 action may be appropriate. Please find attached the Request for Article 15 Form (Atch 1) made available for your convenience, to fax (DSN 225-7180) or hand carry to the legal office. Once contact with the legal office is accomplished, the squadron can rely on and benefit from a legal assessment to advise the commander regarding an appropriate response. Further, the legal office can assist in locating and compiling necessary and relevant evidence required for further processing.

c. **Assembling the Evidence:** Examples of evidence include OSI/SP Reports, witness statements, urinalysis results, etc. The evidence and request for Article 15 should be delivered to the legal office as soon as possible after it is known that an offense has occurred. Assembly and delivery of evidence should be accomplished without delay (i.e., within 10 days of learning of the alleged offense) so that sufficient time remains for JA coordination. If you have any questions about whether or not something constitutes relevant evidence you can always ask the Military Justice Section of the legal office. As a general rule of thumb, when in doubt, include it.

d. **Coordinating at JA:** The Military Justice Section will review the evidence and prepare the Article 15 specifications per the guidance of the UCMJ. It is imperative that the legal office write the specifications because these are comprised of very specific language, often with unique or arcane legal terms. The OIC or NCOIC or the Article 15 monitor of Military Justice will tell your unit representative if evidence or information is obviously missing and

whether or not the Article 15 can be prepared while you wait. All Article 15 specifications are prepared and reviewed by military attorneys. This is to ensure that they will be written to meet standards of legal sufficiency and will withstand the scrutiny of 5th Air Force and higher headquarters review.

e. **Ordering the AMJAMS RIP:** The AMJAMS RIP is used to record coded information about an Article 15 offense and the offender, in order to transform those details into a computer product. Our Article 15s can then be compared with Article 15s throughout the Air Force via these computer inputs. An AMJAMS Rip should be ordered by the unit orderly room at the time you initially contemplate processing an Article 15.

2. The Air Force Form 3070, Record of Nonjudicial Punishment Proceedings

a. **Preparing the AF Form 3070:** The AF Form 3070, dated Jul 95, (Atch 2) is used to record nonjudicial punishment proceedings. The Military Justice Section will review your completion of the appropriate blocks on the form. Old forms and those downloaded from Formflow will not be used.

b. **Notification:** To notify the member of the intent to use nonjudicial punishment, read the member part 1 - 4 of the AF Form 3070. The Military Justice Section of the Legal Office will have completed blocks 1 - 3 of the form in preparing the document for your use. You will only annotate in block 4 when the member is to notify the commander of his/her decision (Atch 2). Any changes to the information prepared by the legal office **MUST** be coordinated with the Military Justice Section.

NOTE: The Article 15 can be served on the member by someone other than the commander. There are two ways this can be done. If the commander wishes to elevate the Article 15 to a supervisory commander of higher rank and grade that individuals name is typed in the blank for section 1b. Then the immediate commander becomes the person serving the member. The second way is where the immediate commander has been named in the blank for section 1b., has signed the form, right under section 4, and a junior unit

representative presents notification to the member and becomes the person serving. This can only be accomplished if authorized by the commander. In either case that “server” fills in the item “DATE/TIME SERVED ON THE MEMBER.” If the commander serves the Article 15, the last item of block 4 will remain blank, but a date/time served on member still must be entered on the AF Form 3070.

The member is now given three duty days to consult an Area Defense Counsel (ADC), if he/she wishes, in order to understand what his/her rights are concerning an Article 15. Also, remember to ensure that the three duty days given to the member in block 4 do not include weekends or holidays unless they are duty days for the member.

c. **When the Member Responds:** (Block 5) Have the member initial his selections and sign and date the bottom of block 5. Make sure the name and rank are typed in correctly. If an error is made with regard to the member’s rank the punishment imposed may become automatically void for legal sufficiency. If the member fails to elect options by the deadline specified in block 4, call the Military Justice Section for processing advice. You need not wait and should coordinate further processing immediately with JA.

NOTE: Commanders Guide to Personal Appearances:

A personal appearance is an opportunity for a member to present matters orally (and in writing if the member desires) to the commander initiating nonjudicial punishment proceedings or, in certain cases, to the commander’s designee. A personal appearance is not an adversarial proceeding. No evidence on behalf of the government should be presented at a personal appearance. Such matters should be provided to the member before the appearance. This is necessary to preserve the character of the personal appearance, which is designed exclusively to give the member the opportunity to present matters.

A personal appearance is not the proper time for the commander to counsel the member. Counseling at this time would compromise the character of the personal appearance. Counseling at the time of imposition of

punishment, or later, is more appropriate. Confrontations should be avoided. Confrontations will also compromise the character of the presentation.

Personal appearances should be scheduled promptly after the member's request for an appearance. The commander presiding over the personal appearance should consider telephone interviews with distant witnesses as part of the personal appearance, if circumstances warrant.

There is no right to a personal appearance on appeal. All matters on appeal must be made in writing to the immediate commander.

The commander should **NEVER** determine punishment before the member makes a presentation by a personal appearance or through written matters. A commander can only determine whether to impose nonjudicial punishment and, if so, how much punishment to impose, after considering matters which the member presents in defense, extenuation, or mitigation.

d. **Entering the Punishment:** The commander must personally coordinate the punishment with the Article 15 monitor of the Military Justice section, prior to completing block 6. The legal office will type in the punishment language, ensuring that it is accurate and legally sufficient, on the original AF Form 3070. Read blocks 6 - 8 of the AF Form 3070 to the member and annotate in block 8 the time and date the member must notify you of his/her decision to appeal (5 calendar days from the date of punishment - the five days begins running immediately after the punishment is read to the member).

e. **Decision to Appeal or Not to Appeal:** (Block 9) After the member is notified of the punishment, the member needs to acknowledge receipt of the punishment and of his/her rights to appeal by signing the first "**Member's Signature**" block and by putting in the "**date**." If the member wants to appeal the punishment, then he initials the first election in block 9, then signs and dates that block. The member is given five calendar days, not duty days, to decide to appeal, not to appeal or to submit an appeal. If the member decides not to appeal, he must initial the third section in block 9, then sign and date by that block.

f. **Completing the Article 15 in a Non-Appeal Case:**

(1) (Block 11) The commander enters his intent to file or not to file the Article 15 in a UIF by initialing his/her choice in block 11. In a non-appeal case, blocks 11 and 12 should be completed as soon as possible after the member completes block 9. The decision to file the Article 15 in the member's UIF is mandatory if any of the punishment is suspended for more than one month, (Example: Suspended Reduction in Rank) or if the punishment period is in excess of one month (Example: 45 days extra duty, forfeitures for more than one month).

(2) (Block 12) The member needs to complete block 12 in the presence of the commander immediately after the commander completes block 11. All of block 12 must be completed. Have member both date and sign Block 12.

(3) In a routine Article 15, with no appeal, you are almost finished. All you need to do now is bring the completed action to the legal office, in it's original packet with the following documents:

- (a) AF Form 3070
- (b) AF Form 3070 Offense/punishment attachments
- (c) Member's Article 15 presentation (if applicable)
- (d) ADC's delay letter (if applicable)
- (e) AMJAMs RIP

(Note: If the file lacks these documents, the file will be returned to the unit for additional materials.)

3. **OFFICER ARTICLE 15 ACTIONS:**

Procedures are more complex in the case of an Article 15s. Contact JA as soon as possible for assistance.

4. **CHANGE OF COMMANDER DURING ARTICLE 15 PROCESS:**

If a commander is TDY or on leave, you should not normally wait until that commander returns to initiate or to continue processing an Article 15. The interim commander must be on orders (REQUEST AND AUTHORIZATION FOR ASSUMPTION OF/APPOINTMENT TO COMMAND - AF Form 35) to take action in the Article 15 process. A special change of command letter is required when two successive commanders are involved in the Article 15 process. This is required, for example, when one commander notifies of his/her intent to offer an Article 15 and another commander serves the punishment or makes the decision regarding placement in the member's UIF.

5. ELEVATING AN ARTICLE 15:

Sometimes it may be appropriate for a commander to initiate an Article 15 and also recommend that punishment be imposed by that commander's superior officer. This might be the case when the initiating commander is a captain or lieutenant, with limited nonjudicial punishment authority. A superior commander will be able to consider a broader range of nonjudicial punishments. The involvement of the superior commander, in and of itself, will communicate the seriousness of the Article 15 action to the offender. (See page 2 of the AF Form 3070 "Maximum Permissible Punishment" Based on Commander's Rank)

6. VACATION OF SUSPENDED PUNISHMENTS:

(See attachment 3 for vacation action example) A suspended Article 15 punishment can be "executed" when further misconduct occurs during the period of suspension. This is called a vacation of suspended nonjudicial punishment. The vacation is not automatic. You must bring evidence of the new offense to the OIC, the NCOIC, or the Article 15 monitor of the Military Justice section for processing. The vacation action is processed like the initial Article 15, except that a Record of Proceedings of Vacation of Suspended. Nonjudicial Punishment (AF Form 366) is used instead of an AF Form 3070.

(Note: A suspended punishment may be vacated only by a commander authorized to impose the punishment.)

a. **Date of the Offense**: A suspended punishment may be vacated if the member commits any type of misconduct during the period of suspension.

b. **Taking Action**: The vacation action must be initiated on the AF Form 366 before the last day of the suspension period. This means that if the suspension period ends on 19 July 96, you must serve the vacation action no later than 18 July 1996. If you miss this deadline, the commander may elect to process the action as a new Article 15.

c. **Suspended Rank Reductions**: Note that the new date of rank for a vacation of a suspended grade reduction will be the date of the original Article 15 punishment (retroactive).

d. **Further Action**: As explained in MCM, part V, paragraph 6a(5), the commander may decide to process both a vacation action and a new Article 15, based on the same offense. Please consult with the Chief of Military Justice for assistance.

e. **10 Day Suspense**: Vacation actions need to be initiated within 10 days of the date of the offense whenever possible, just like all initial Article 15 actions. The member is given three duty days to consult the Area Defense Counsel.

7. RECORD OF SUPPLEMENTARY ACTION UNDER ARTICLE 15, UCMJ (AF FORM 3212):

A commander cannot suspend, mitigate, remit, or set aside punishment under Article 15 unless it is punishment that the commander had authority to impose. Before starting any action to suspend, mitigate, remit, or set aside a previously imposed punishment, the commander or first sergeant needs to consult the Military Justice Section. These actions must be initiated within four months of the original punishment.

a. **Remission**: At any time before the execution of the punishment is completed, a commander may “excuse” the member from the unexecuted

portion. This is called a remission. (See MCM, part V, paragraph 6c and AFI 51-202, paragraph 8.6.) A sample remission is included in attachment 4 of this guide. The effective date of the remission will be the date the commander signs the AF Form 3212, unless a later date is annotated in block 3 of the form. Please contact the Military Justice Section for further instructions.

b. **Set Aside:** When a commander decides that a member who has been punished or is being punished, has suffered “clear injustice”, the commander can cancel the punishment in whole or in part and restore that member’s rights, privileges or property. (See MCM, Part V, paragraph 6d and AFI 51-201, paragraph 8.7.) Please contact the Military Justice Section for further instructions.

NOTE: Action to set aside punishment should be taken only within a reasonable time, normally four months (absence of unusual circumstances) after the punishment has been executed and only after consultation with the Chief of Military Justice.

c. **Mitigation:** Mitigation is a reduction in either the quantity or quality of the punishment imposed. It is given when the offender’s later good conduct merits a reduction in the punishment. This **must** be initiated within **four months** of the original punishment. (SEE MCM, Part V, paragraph 6b and AFI 51-202, paragraph 8.5.) Please contact the Military Justice Section for further instruction and assistance.

d. **Suspension:** A commander may elect to suspend punishment at the time of the initial Article 15 action. Furthermore, even an executed reduction in grade or forfeiture of pay may later be suspended, so long as the suspension is initiated within four months of the original punishment imposition date. Suspension of a punishment may not be for a period longer than 6 months from the date of suspension. (See MCM, Part V, paragraph 6a and AFI 51-202, paragraph 8.4.) Please contact the Military Justice Section for further instruction and assistance.

8. **MISCELLANEOUS MATTERS:**

When considering what punishment to give an offender, the commander should maintain an open mind , free of predetermined punishment until he/she has had an opportunity to review and consider all the evidence, including the evidence presented by the member. Additionally, the commander should consider all aspects of what the proposed punishment will do to the offender now and in the future (i.e. will the punishment prevent the member from reenlisting or qualifying for a CJR? Will the punishment render the member ineligible to test for promotion in the next testing cycle?)

Also, if the offender is an officer or a senior noncommissioned officer, the commander imposing the punishment must consider whether to include the Article 15 in the offender's Promotion Selection Record, under the provisions of AFI 36-2608. Please contact the Military Justice Section whenever you process an Article 15 involving an officer or a member in the top three enlisted grades for special help.

Attachments:

1. Sample Article 15 Request *(not included)*
2. Sample AF Form 3070 *(not included)*
3. Sample AF Form 366 *(not included)*
4. Sample AF Form 3212, Remission *(not included)*
5. Sample AF Form 3212, Mitigation *(not included)*
6. LOR Writing Handbook *(not included)*